

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Michael Nash and Hon. Mary Ann Grilli, Co-chairs
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DATE: November 1, 2002

SUBJECT: Juvenile Law: Delinquency Foster Care (amend Cal. Rules of Court, rules 1429.3 and 1496; adopt rules 1496.2 and 1496.3; revise form JV-625) (Action Required)

Issue Statement

Assembly Bill 1696, effective January 1, 2002, made a number of changes to the Welfare and Institutions Code sections pertaining to wards in foster care placement. The corresponding rules are no longer in compliance with statutory requirements. In addition, the procedures for obtaining a guardianship of a ward were inadequately described, lacked standards for probation reports, and were difficult to find, in rule 1429.3(c) and (d).

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Council, effective January 1, 2003:

1. Amend rule 1429.3 to delete most of subdivision (c) and all of subdivision (d), pertaining to guardianships of wards.
2. Amend rule 1496 to conform the requirements for six-month status review hearings, permanency planning hearings, and post-permanency status review hearings to those in the newly revised Welfare and Institutions Code sections 727.2 and 727.3; add requirements regarding notice in conformity with section 727.4; and clarify the probation officer's reporting requirements, as provided by sections 706.5, 706.6, 727.2, 727.3 and 727.4.
3. Adopt rule 1496.2 to replace language removed from rule 1429.3 (c) and (d) and to clarify the procedures for appointing a guardian for a ward in juvenile court.
4. Adopt rule 1496.3 to include in the rules the requirements for termination of parental rights under existing section 16508.1 and section 727.32 of the Welfare and Institution Code, as required by federal law.

5. Revise form JV-625, *Notice of Hearing—Juvenile Wardship Proceeding*, to provide that the child’s appearance at the hearing may be designated by the court as either mandatory or optional, and to allow the form to be used for permanency hearings, as well as other types of hearings.

The amended and adopted rules and the revised form are attached on pages 6–19.

Rationale for Recommendation

Rule 1429.3, Orders after filing of petition under sections 601 or 602

Sections (a) and (b) are revised slightly to correct minor errors. Section (c) is revised and section (d) is deleted, to be replaced by stand-alone and more comprehensive guardianship requirements in new rule 1496.2 (see description below).

Rule 1496, Reviews and permanency planning hearings

This rule has been substantially revised so it will conform to the new requirements in the Welfare and Institutions Code and the federal Adoption and Safe Families Act, as follows:

- The six-month review requirements in subdivision (a) are revised to clarify that before the first permanency planning hearing, the court must return the child to his or her home if it is not detrimental to do so. A provision has been added requiring the court to make a determination about the independent living services required for children ages 16 and older and to make all required findings in writing, referencing the evidence on which the court relied in making its decision. (Welf. & Inst. Code, §§ 727.2, 11404.1.)
- The permanency planning requirements in subdivision (b) are substantially expanded to delineate all permanency options and their order of priority. (Welf. & Inst. Code, §§ 727.2, 727.3, 11404.1.)
- In subdivision (c), the post-permanency requirements are amended to indicate that the court must either find that the prior permanent plan continues to be appropriate or order a new permanent plan, but the default option is no longer returning the child home (unless return home is ordered as the permanent plan). (Welf. & Inst. Code, § 727.2.)
- The notice provisions in subdivision (d) are amended to indicate that form JV-625 may be used, and that proof of notice must be filed with the court. (Welf. & Inst. Code, § 727.4.)
- The requirements regarding the probation officer’s report in subdivision (e) are amended to add a case plan requirement, and to specify that the probation officer must document the evidentiary basis for each court order

that is recommended. (Welf. & Inst. Code, §§ 706.5, 706.6, 727.2(c), 727.3(a)(1), 727.4(b).)

Rule 1496.2, Appointment of legal guardians for wards of the juvenile court; modification and termination of guardianship

Over the years, judicial officers, probation officers, and attorneys for children have advised Administrative Office of the Courts staff that the guardianship provisions in existing rule 1429.3 were inadequate. The provisions are difficult to find, and inadequate in that they do not allow a guardianship to be granted based on the court's motion, they fail to require the probation officer to prepare a report, do not provide any guidance about the conduct of the hearing or the issue of visitation with parents or relatives and fail to indicate that the juvenile court has exclusive jurisdiction to modify or terminate a wardship established by the juvenile court. New rule 1496.2 addresses the reported concerns by clarifying who may request a guardianship, requiring the probation officer to prepare an assessment, and delineating the required elements of that assessment report. The rule also indicates which forms may be used and establishes procedures for notice, conduct of the hearing, findings and orders including visitation, as well as for modification or termination of the guardianship, or appointment of a successor guardian or co-guardian.

Rule 1496.3, Termination of parental rights for child in foster care for 15 of the last 22 months

The federal Adoption and Safe Families Act requires that procedures be in place for terminating the parental rights of the parents of any child who has been in a foster care placement for 15 of the most recent 22 months. (42 U.S.C. § 675(5)(E).) However, federal law allows this requirement to be waived when a "compelling reason" that termination of parental rights is not in the child's best interest has been demonstrated. (42 U.S.C. § 675(5)(E); 45 C.F.R. § 1356.21(i).) These requirements were codified in California in section 16508.1 of the Welfare and Institutions Code, and specifically for wards in new section 727.32. Rule 1496.3 brings the requirements of state and federal law into the rules for the first time. The rule also establishes new guidelines for how the 15 months in foster care should be calculated.

Form JV-625, Notice of Hearing—Juvenile Wardship Proceeding

Minor changes have been made in this form. First, a check-off box has been added allowing the form to be used for a permanency hearing. In addition, a check-off box is added next to the language indicating that the child was ordered to be present at the hearing, making this an optional order on the form. The changes make the form easier to use at permanency hearings and are consistent with the law, which does not require the child to be present at all reviews and permanency hearings.

Alternative Actions Considered

No alternative actions were considered regarding the change to rule 1496 and the adoption of rule 1496.3, since these changes were mandated by statutory changes.

Two alternatives were considered with respect to amending rule 1429.3. The first alternative was to do nothing. This would have left the guardianship provisions in rule 1429.3 as they were, inadequate and difficult to find. Adding a new rule 1496.2, solely addressed to guardianship issues, including standards for what must be included in a guardianship assessment prepared by the probation officer, was preferable.

The second alternative considered was to include language in subdivision (a) of new rule 1496.2, which would require that all proceedings to appoint legal guardians for wards must be held in juvenile court. This language was sent out for comment. The committee received comments strongly opposed to this exclusive jurisdiction provision. Given this opposition, and the lack of a specific statutory basis for the exclusive jurisdiction clause, the committee recommends that the council adopt the attached version of rule 1496.2, which clarifies the procedures for guardianships in juvenile court, while allowing guardianships of wards to continue to occur in Probate court as well. Furthermore, adoption of an exclusive jurisdiction clause at this time is inadvisable because of the ongoing collaboration of the Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee, through a joint Guardianship Working Group. The latter group is awaiting final research results from a guardianship study it commissioned. Both committees are concerned about the interrelationship between juvenile and probate courts in the guardianship arena. Until the working group completes its work, including an exclusive juvenile jurisdiction clause in this rule would be premature.

No alternatives were considered to the minor changes proposed for Form JV-625, since the changes clarify the uses of the form, and make it more consistent with statutory language.

Comments From Interested Parties

These proposals were circulated for comment, and most commenters agreed with the recommended changes. The comment chart and the committee's response are attached at pages 20–23.

Two comments raised concerns about the underlying law, and the burden on probation, but neither suggested alternatives.

One commenter opposed the change in Rule 1496(c)(2), which deletes the requirement that the child be returned home, as the default, at any post-permanency planning hearing. The committee disagrees, since the change in Rule 1496(c)(2) brings that subsection into compliance with Welfare and Institutions Code section 727.2(g).

One commenter, representing the California Center for Law and the Deaf, recommends that a notice be added to form JV-625 stating that a sign language interpreter, assistive listening device, or real-time transcriber will be provided upon request to deaf and hearing-impaired individuals. The response to this comment has

been deferred pending approval of a comprehensive policy by the Council's Rules and Projects Committee.

Implementation Requirements and Costs

Courts will incur some costs in printing the revised forms.

Rules 1429.3 and 1496 of the California Rules of Court are amended, rules 1496.2 and 1496.3 are adopted, and form JV-625 is revised, effective January 1, 2003, to read:

Rule 1429.3. Orders after filing of petition under section 601 or 602

- (a) **[Restraining orders (§ 213.5)]** After a petition has been filed under section 601 or 602, and until the petition is dismissed or wardship is terminated, the court may issue restraining orders as provided in rule 1429.5. The restraining orders ~~shall~~ must be prepared on Judicial Council form *Restraining Order—Juvenile* (JV-250).
- (b) **[Custody and visitation (§ 726.5)]** At any time while the child is a ward of the juvenile court or at the time wardship is terminated, the court may issue an order determining custody of, or visitation with, the child.
- (1) *(Modification of existing court orders—new case filings)* The order of the juvenile court ~~shall~~ must be filed in an existing nullity, dissolution, legal separation, or paternity proceeding. If no custody proceeding is filed or is pending, the order may be used as the sole basis to open a file.
- (2) *(Preparation and transmission of order)* The order ~~shall~~ must be prepared on Judicial Council form *Custody Order—Juvenile* (JV-200). The court may direct the social worker, parent, child's attorney, or clerk to:
- (A) Prepare the order for the court's signature; and
- (B) Transmit the order within 10 calendar days after the order is signed to the superior court of the county in which a custody proceeding has already been commenced or, if none, to the superior court of the county in which the parent who has been given custody resides. If the parent to whom custody has been given resides in another state or country, the order ~~shall~~ must be filed in the county of the juvenile court issuing the order.
- (3) *(Procedures for filing order—receiving court)* Upon receipt of the juvenile court custody order, the superior court clerk of the receiving county ~~shall~~ must immediately file the juvenile court order in the existing proceeding, or ~~shall~~ must immediately open a file, without a filing fee, and assign a case number.

1
2 (4) (*Endorsed filed copy*~~—~~*clerk's certificate of mailing*) Within 15
3 court days after receiving the order, the clerk of the receiving court
4 ~~shall~~must send by first-class mail an endorsed filed copy of the
5 order showing the case number of the receiving court to (i) the
6 persons whose names and addresses are listed on the order, and (ii)
7 the originating juvenile court, with a completed clerk's certificate
8 of mailing, for inclusion in the child's juvenile court file.
9

10 (5) (*Order determining custody*~~—~~*continuation of jurisdiction*) If the
11 court orders custody to a parent subject to the jurisdiction of the
12 court with services to one or both parents, the court may direct the
13 order be prepared and filed in the same manner as described in
14 paragraphs (1)–(4) of this subdivision.
15

16 (c) **[Appointment of a legal guardian of the person (§ 728)]** At any time
17 during wardship of a person under 18 years, the court may appoint a
18 guardian, or may terminate or modify a previously established
19 guardianship, in accordance with the requirements in rule 1496.2. ~~If the~~
20 ~~probation officer or the child's attorney recommends or requests by~~
21 ~~filing Judicial Council forms JV 600 and JV 740 that a guardianship of~~
22 ~~the person be established, the court shall set a hearing and order notice~~
23 ~~under section 1511 of the Probate Code.~~
24

25 (1) ~~If the court determines that appointment of a guardian is necessary~~
26 ~~or convenient, and is consistent with the rehabilitation and~~
27 ~~protection of the child and with public safety, the court shall~~
28 ~~appoint a guardian of the person and order that letters of~~
29 ~~guardianship (form JV 325) issue as specified in the Probate Code.~~
30

31 (2) ~~If the court appoints a guardian, the court may continue wardship~~
32 ~~and conditions of probation or terminate wardship.~~
33

34 (3) ~~Proceedings to modify or terminate a guardianship established~~
35 ~~under section 728 shall be heard in juvenile court.~~
36

37 (d) **~~[Termination or modification of previously established~~**
38 **~~guardianships (§ 728)]~~** At any time after the filing of a petition under
39 section 601 or 602 and until the petition is dismissed or wardship is
40 terminated, the court may terminate or modify a guardianship of the
41 person previously established by the juvenile court or the probate court.
42 If the probation officer recommends to the court by filing Judicial
43 Council forms JV 600 and JV 740 that an existing guardianship be

1 ~~modified or terminated, the court shall order the appropriate county~~
2 ~~agency to file the recommended motion.~~

3
4 ~~(1) The hearing on the motion may be held simultaneously with any~~
5 ~~regularly scheduled hearing regarding the child. Notice~~
6 ~~requirements under Probate Code section 1511 shall apply.~~

7
8 ~~(2) If the court terminates or modifies a previously established probate~~
9 ~~guardianship, the court shall provide notice of the order to the~~
10 ~~probate court that made the original appointment. The clerk of the~~
11 ~~probate court shall file the notice in the probate file and send a~~
12 ~~copy of the notice to all parties of record identified in that file.~~

13
14 **Rule 1496. Reviews and permanency planning hearings**

15
16 **(a) [Six-month status review hearings (§§ ~~727.3~~ 727.2, 11404.1)]** A status
17 review hearing must be conducted no less frequently than once every six
18 months from the date the ward entered foster care, for any ward
19 removed from the custody of his or her parent or guardian under section
20 726 and placed under section 727. The court may consider the hearing at
21 which the initial order for placement is made as the first status review
22 hearing.

23
24 (1) *(Consideration of reports (§ ~~727.3~~ 727.2(d))* The court ~~shall~~ must
25 review and consider the social study report of and updated case
26 plan submitted by the probation officer, and ~~of the report submitted~~
27 by any court-appointed special advocate, as well as any other
28 reports filed with the court pursuant to section ~~727.3(g)~~ 727.2(d).

29
30 (2) *(Return of child if not detrimental (§ ~~727.3~~ 727.2(f))* At any status
31 review hearing prior to the first permanency hearing, the court
32 must order the return of the ward to the parent or guardian unless it
33 finds the probation department has established by a preponderance
34 of evidence that return would create a substantial risk of detriment
35 to the safety, protection, or physical or emotional well-being of the
36 ward. The probation department ~~shall have~~ has the burden of
37 establishing that detriment. ~~The failure of the child to participate in~~
38 ~~court-ordered treatment programs shall be prima facie evidence of~~
39 ~~detriment.~~ In making its determination, the court must review and
40 consider all reports submitted to the court, and must consider the
41 efforts and progress demonstrated by the child and the family and
42 the extent to which the minor availed himself or herself of the
43 services provided.

- 1
2 (3) (*Findings and orders* (§ ~~727.3~~ 727.2(d)) The court ~~shall~~ must
3 consider the safety of the ward and make findings and orders that
4 determine the following:
5
6 (A) The continuing necessity for and appropriateness of the
7 placements;
8
9 (B) The extent of the probation department's compliance with the
10 case plan in making reasonable efforts to safely return the
11 child to the child's home and to complete whatever steps are
12 necessary to finalize the permanent placement of the child;
13
14 (C) The extent of progress that has been made by the child and
15 parent or guardian toward alleviating or mitigating the causes
16 necessitating placement in foster care; ~~and~~
17
18 (D) The likely date by which the child may be returned to and
19 safely maintained in the home or placed for adoption, legal
20 guardianship, or another permanent plan; and
21
22 (E) In the case of a child who is 16 years of age or older, the
23 court shall must determine the services needed to assist the
24 child in making the transition from foster care to independent
25 living.
26
27 (4) The determinations required by (a)(3) must be made on a case-by-
28 case basis, and the court must reference, in its written findings, the
29 probation officer's report and any other evidence relied upon in
30 reaching its decision.
31
32 (b) **[Permanency planning hearings (§§ 727.2, 727.3, 11404.1)]** A
33 permanency planning hearing for any ward who has been removed from
34 the custody of a parent or guardian and not returned at a previous review
35 hearing must be held within 12 months of the date the ward entered
36 foster care and periodically thereafter, but no less frequently than once
37 every 12 months while the ward remains in placement. However, when
38 no reunification services are offered to the parents or guardians under
39 section 727.2(b), the first permanency planning hearing must occur
40 within 30 days of disposition.
41
42 (1) (*Consideration of reports* (§ 727.3)) The court ~~shall~~ must review
43 and consider the social study report of and updated case plan

submitted by the probation officer, and of the report submitted by any court-appointed special advocate, as well as any other reports filed with the court pursuant to section ~~727.3(g)~~ 727.3(a)(2).

(2) (*Findings and orders*) At each permanency planning hearing the court ~~shall must also~~ consider the safety of the ward and make findings and orders regarding the following:

(A) The continuing necessity for and appropriateness of the placement;

(B) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home and to complete whatever steps are necessary to finalize the permanent placement of the child; ~~and~~

(C) The extent of progress that has been made by the child and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care; and

(D) The permanent plan for the child, as described in section (3), below.

(3) (*Selection of a permanent plan* (~~§ 727.3(f)(1)~~ 727.3(b)) At the first permanency planning hearing, the court ~~shall must~~ select a permanent plan ~~of return home, or another permanent plan consistent with sections 727.3 (f)–(k)~~. At subsequent permanency planning hearings, the court ~~shall must~~ either make a finding that the current permanent plan is appropriate or select a different permanent plan, including returning the child home, if appropriate. The court must choose from one of the following permanent plans, which are, in order of priority:

(A) A permanent plan that immediately returns the child to the physical custody of the parent or guardian. This plan must be the permanent plan unless no reunification services were offered under section 727.2(b), or unless the court finds that the probation department has established by a preponderance of evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well being of the ward. The probation department has the burden of establishing that detriment. In making its

determination, the court must review and consider all reports submitted to the court, and must consider the efforts or progress, or both, demonstrated by the child and family and the extent to which the minor availed himself or herself of the services provided.

(B) A permanent plan of return of the child to the physical custody of the parent or guardian, after six additional months of reunification services. The court may only order this plan if the court finds that there is a substantial probability that the child will be able to return home within 18 months of the date of initial removal.

(C) A permanent plan of adoption. When this plan is identified, the court must order that a hearing under section 727.31 be held within 120 days.

(D) A permanent plan of legal guardianship. When this plan is ordered, the court must set a hearing pursuant to the procedures described in section 728 and rule 1496.2.

(E) A permanent plan of placement with a fit and willing relative. When this plan is ordered, the court must specify that the minor will be placed with the appropriate relative on a permanent basis.

(F) A permanent plan of placement in a planned permanent living arrangement. The court may order this permanent plan only after considering, and ruling out, each of the other permanent plan options listed above. If, after doing so, the court concludes that a planned permanent living arrangement is the most appropriate permanent plan for the child, it must also enter a finding, by clear and convincing evidence, that there is a compelling reason, as defined in section 727.3(c), for determining that a plan of termination of parental rights and adoption is not in the best interest of the child. When a planned permanent living arrangement is ordered, the court must specify the type of placement. The court must also specify the goal of the placement, which may include, but is not limited to, a goal of the child returning home, emancipation, guardianship, or permanent placement with a relative.

1 (4) (Involvement of parents or guardians) If the child has a continuing
2 involvement with his or her parents or legal guardians, they must
3 be involved in the planning for permanent placement. The
4 permanent plan order must include an order regarding the nature
5 and frequency of visitation with the parents or guardians.
6

7 (c) **[Post-permanency status review hearings (§ ~~727.3(e)~~ 727.2)]** A post-
8 permanency status review hearing ~~shall~~ must be conducted for wards in
9 placement annually, six months after each permanency planning
10 hearing.

11
12 (1) (Consideration of reports (§ ~~727.3~~ 727.2(d)) The court ~~shall~~ must
13 review and consider the social study report of and updated case
14 plan submitted by the probation officer, and of the report submitted
15 by any court-appointed special advocate, as well as any other
16 reports filed with the court pursuant to under section 727.3(g)
17 727.2(d).
18

19 ~~(2) (Return of child if not detrimental (§ 727.3))~~ The court ~~must~~ order
20 the return of the ward to the parent or guardian unless it finds the
21 probation department has established by a preponderance of
22 evidence that return would create a substantial risk of detriment to
23 the safety, protection, or physical or emotional well-being of the
24 ward. The probation department shall have the burden of
25 establishing that detriment. The failure of the child to participate in
26 court-ordered treatment programs shall be prima facie evidence of
27 detriment.
28

29 ~~(3)~~(2) (Findings and orders) At each post-permanency status review
30 hearing the court ~~shall~~ must make a finding about whether the
31 current permanent plan continues to be appropriate for the ward.
32 The court ~~shall~~ also consider the safety of the ward and make
33 findings and orders regarding the following:
34

35 (A) Whether the current permanent plan continues to be
36 appropriate. If not, the court must select a different
37 permanent plan, including returning the child home, if
38 appropriate. The court must not order the permanent plan of
39 returning home after six more months of reunification
40 services, as described in (b)(3)(B), unless it has been 18
41 months or less since the date the child was removed from
42 home;
43

1 (A)(B) The continuing necessity for and appropriateness of the
2 placement; and

3
4 (B)(C) The extent of the probation department's compliance with
5 the case plan in making reasonable efforts to complete
6 whatever steps are necessary to finalize the permanent
7 placement plan for of the child.
8

9 (d) [Notice of hearings; service; contents (§§ 727.3, 727.4)] Not earlier
10 than 30 nor less than 15 calendar days before each hearing date the
11 petitioner or the clerk shall must serve written notice on all persons
12 required to receive notice under rule 1407, as well as the child's present
13 custodian, any court-appointed special advocate, and the counsel of
14 record. The notice of hearing shall must be served by personal service or
15 by first class mail or certified mail, addressed with the last known
16 address of the person to be notified. Judicial Council form Notice of
17 Hearing—Juvenile Wardship Proceeding (JV-625) may be used. Proof
18 of notice must be filed with the court.
19

20 (1) The notice shall must contain the information required by rule
21 1407, the nature of the hearing, and any recommended change in
22 custody or status, and,
23

24 (2) The notice must include a statement that the child and the parent or
25 guardian have a right:

26
27 (A) To be present at the hearing;

28
29 (B) To be represented by counsel at the hearing and, where
30 applicable, to be notified of the right to and the procedure for
31 obtaining appointed counsel; and
32

33 (C) To present evidence regarding the proper disposition of the
34 case.
35

36 (2)(3) The notice to the present custodian of the child shall must indicate
37 that the custodian may:

38
39 (A) Be present at the hearing; and

40
41 (B) Submit written material the custodian considers relevant.
42

1 (e) **[Report (§§ 706.5, 706.6, 727.2(c), 727.3(f), 727.3(a)(1), 727.4(b))]**
2 Before each hearing described above, the probation officer ~~shall~~ must
3 ~~make an investigation~~ and prepare a social study report, including an
4 updated case plan, that ~~shall~~ must include all of the information required
5 in sections 706.5, 706.6, 727.2, and 727.3, and 727.4. The report ~~shall~~
6 must contain recommendations for court orders and ~~the reasons~~ must
7 document the evidentiary basis for those recommendations.
8

9 At least 10 calendar days before each hearing, the petitioner ~~shall~~ must
10 file the report and provide copies of the report to the ward, the parent or
11 guardian, all attorneys of record, and any court-appointed special
12 advocate.
13

14 (f) **[Hearing by administrative panel (§§ 727.3(d), 727.2(h) and**
15 **727.4(d)(7)]** The status review hearings described in subdivisions (a)
16 and (c) above may be conducted by an administrative review panel,
17 provided:
18

- 19 (1) The ward, parent or guardian, and all those entitled to notice under
20 section 727.4 may attend;
- 21
- 22 (2) Proper notice is provided;
- 23
- 24 (3) The panel has been appointed by the presiding judge of the
25 juvenile court and includes at least one person who is not
26 responsible for the case management of, or delivery of services to,
27 the ward or the parent or guardian; and
28
- 29 (4) The panel makes findings as required by ~~subsection~~ subdivision
30 (a)(3) or (c)(3) above and submits them to the juvenile court for
31 approval and inclusion in the court record.
32

33 **Rule 1496.2. Appointment of legal guardians for wards of the juvenile court;**
34 **modification or termination of guardianship**
35

36 (a) **[Proceedings in juvenile court (§728)]** Proceedings for the
37 appointment of a legal guardian for a minor who is a ward of the
38 juvenile court under Welfare and Institutions Code section 725(b) may
39 be held in the juvenile court.
40

41 (b) **[Recommendation for guardianship (§728(c))]** On the
42 recommendation of the probation officer supervising the minor, the
43 motion of the attorney representing the child, or the court's own motion

1 and order that a legal guardian should be appointed for the minor, the
2 court must set a hearing to consider the establishment of a legal
3 guardianship and must order the probation officer to prepare an
4 assessment that includes:

- 5
- 6 (1) A review of the existing relationship between the minor and the
7 proposed guardian;
- 8
- 9 (2) A summary of the child's medical, developmental, educational,
10 mental, and emotional status;
- 11
- 12 (3) A social history of the proposed guardian, including a screening
13 for criminal records and any prior referrals for child abuse or
14 neglect;
- 15
- 16 (4) An assessment of the ability of the proposed guardian to meet the
17 child's needs and the proposed guardian's understanding of the
18 legal and financial rights and responsibilities of guardianship; and
- 19
- 20 (5) A statement confirming that the proposed guardian has been
21 provided with a copy of Judicial Council form *Guardianship*
22 *Pamphlet* (JV-350) or *Guardianship Pamphlet (Spanish)* (JV-355).
- 23

24 **(c)** **[Forms]** The probation officer or child's attorney may use Judicial
25 Council forms *Juvenile Wardship Petition* (JV-600) and *Petition to*
26 *Modify Previous Orders—Change of Circumstances* (JV-740) to request
27 that a guardianship hearing be set.

28

29 **(d)** **[Notice (§728(c))]** The clerk must provide notice of the hearing to the
30 child, the child's parents, and other individuals as required by Probate
31 Code section 1511.

32

33 **(e)** **[Conduct of hearing]** The court must read and consider the assessment
34 prepared by the probation officer and any other evidence. The preparer
35 of the assessment must be available for examination by the court or any
36 party to the proceedings.

37

38 **(f)** **[Findings and orders]** If the court finds that establishment of a legal
39 guardianship is necessary or convenient, and consistent with the
40 rehabilitation and protection of the minor and with public safety, the
41 court must appoint a legal guardian and order the clerk to issue letters of
42 guardianship (Judicial Council form *Letters of Guardianship (Juvenile)*
43 (JV-325).)

- (1) The court may issue orders regarding visitation and contact between the minor and a parent or other relative.
- (2) Upon the appointment of a legal guardian, the court may continue juvenile court wardship and supervision or may terminate wardship.

(g) [Modification or termination of the guardianship, or appointment of a co-guardian or successor guardian] A petition to terminate a guardianship established by the juvenile court, to appoint a co-guardian or successor guardian, or to modify or supplement orders regarding the guardianship must be filed and heard in juvenile court. The procedures described in rule 1432 must be followed, and Judicial Council forms *Juvenile Wardship Petition* (JV-600) and *Petition to Modify Previous Orders—Change of Circumstances* (JV-740) must be used. The hearing on the motion may be held simultaneously with any regularly scheduled hearing regarding the child.

Rule 1496.3. Termination of parental rights for child in foster care for 15 of the last 22 months

- (a) [Requirement (§§ 727.32(a), 16508.1)]** Whenever a child has been declared a ward and has been in any foster care placement for 15 of the most recent 22 months, the probation department must follow the procedures described in Welfare and Institutions Code section 727.31 to terminate the parental rights of the child's parents, unless the probation department has documented in the probation file a compelling reason, as defined in Welfare and Institutions Code section 727.3(c), for determining that termination of parental rights would not be in the child's best interest, or unless the probation department has not provided the family with reasonable efforts necessary to achieve reunification.
- (1) If the probation department sets a hearing pursuant to Welfare and Institutions Code section 727.31, it must also make efforts to identify an approved family for adoption.
 - (2) If the probation department has determined that a compelling reason exists, it must document that reason in the case file. The documentation may be a separate document or may be included in another court document, such as the social study prepared for a permanency planning hearing.

1 (b) [Calculating time in foster care (§727.32(b))] The following
2 guidelines must be used to determine if the child has been in foster care
3 for 15 of the most recent 22 months:
4

- 5 (1) Determine the date the child entered foster care, as defined in rule
6 1401(a)(7). In some cases, this will be the date the child entered
7 foster care as a dependent.
8
- 9 (2) Calculate the total number of months since the date in (1) that the
10 child has spent in foster care. Do not start over if a new petition is
11 filed or for any other reason.
12
- 13 (3) If the child is in foster care for a portion of a month, calculate the
14 total number of days in foster care during that month. Add one
15 month to the total number of months for every 30 days the child is
16 in foster care.
17
- 18 (4) Exclude time during which the child was detained in the home of a
19 parent or guardian; the child was living at home on formal or
20 informal probation, at home on a trial home visit, or at home with
21 no probationary status; the child was a runaway or “absent without
22 leave” (AWOL); or the child was out of home in a non-foster care
23 setting, including juvenile hall, California Youth Authority, a
24 ranch, a camp, a school, or any other locked facility.
25
- 26 (5) Once the total number of months in foster care has been calculated,
27 determine how many of those months occurred within the most
28 recent 22 months. If that number is 15 or more, the requirement in
29 (a) applies.
30
- 31 (6) If the requirement in (a) has been satisfied once, there is no need to
32 take additional action or provide additional documentation after
33 any subsequent 22-month period.

- A hearing has been set for the date and time below. The child and the parent or guardian or noticed adult relative are entitled to be represented by an attorney.
- The court will appoint an attorney for the child if the child cannot afford to retain an attorney.

See important notice on page 2.

a. Date: _____ Time: _____ Dept.: _____ Room: _____

2. The hearing is for the purpose of

- a. ☐ detention hearing.
- b. ☐ formal reading of petition, advisement of rights, and plea.
- c. ☐ jurisdiction hearing.
- d. ☐ disposition hearing.
- e. ☐ review.
- f. ☐ permanency hearing.
- g. ☐ other (*specify*):

(TYPE OR PRINT NAME)

 _____
(SIGNATURE)

— NOTICE TO PARENT OR GUARDIAN —

1. If your child is ordered to make restitution to the victim, you will be liable to the extent of your ability to pay.
2. You will be liable to the county to the extent of your ability to pay for the following:
 - Fees for an attorney who is appointed to represent your child.
 - Fines and penalty assessments ordered against your child.
3. You may be liable for the costs of support of your child in a county placement or institution.

Comments for SPR02-30
Delinquency Foster Care

| | Commentator | Position | Comment on behalf of group? | Comment | Committee Response |
|----|--|----------|-----------------------------|---|---|
| 1. | Ms. Diane Blair Division Director Riverside County Probation Department | N | N | Don't agree fully with new California law (AB1696) and federal law 42 U.S.C. 670 et. seq.; 45 C.F.R. 1355-1357) in regard to delinquent minors, i.e., permanency planning (page 6(b) and legal guardianship. However, since we can't change the law, rules will have to be changed to comply. | The commenter is concerned with the underlying law, not with the rules themselves. |
| 2. | Mr. Marc Buller Assistant District Attorney Santa Clara County District Attorney's Office | A | | Agree. | No response required. |
| 3. | Mr. George Ducich Forms and Rules Coordinator Superior Court of San Diego County | AM | N | Agree, but please correct typographical errors as indicated. | Agree. Errors will be corrected. |
| 4. | Mr. James Egar Public Defender Santa Barbara County Public Defender's Office | AM | N | 1. Rule 1496(c)(2) should not be deleted and changed in the way proposed. The current language tracks language used in dependency cases and there does not seem to be good reason for changing to a new amorphous standard of "including returning the child home, if appropriate." What does that mean? Who has the burden? What is the mechanism for making this determination? | 1. Disagree. Section (c)(2) of rule 1496 is inconsistent with Welfare and Institutions Code section 727.2, which requires that prior to the first permanency planning hearing, the court consider the date by which the child may be returned home or another permanent plan ordered (§ 727.2(e)(4)), but after the first permanency hearing the court must either find that the previously ordered permanent plan continues to be appropriate or order a new permanent plan. Since rule 1496(c)(2) addresses the period of time after a permanent plan is ordered, it would be inconsistent with the statute for the default |

Comments for SPR02-30
Delinquency Foster Care

| | Commentator | Position | Comment on behalf of group? | Comment | Committee Response |
|----|--|----------|-----------------------------|--|---|
| | | | | <p>2. Regarding new rule 1496.2, we are very much opposed to giving exclusive jurisdiction to the juvenile court. In our experience, probate guardianships can work out much better for some families and that option should be available. The probate judges seem to be more family-oriented and do not seem as cynical as some of the juvenile court judges, who are exposed to so much more failure on the part of parents. Probate judges, in our experience look at foster care as a last resort, whereas juvenile court judges are very quick to separate families. If the concern is that conflicting orders may issue from different judges and courts on one family, that concern can be handled on a case-by-case basis.</p> | <p>to be that the child be returned home at this stage.</p> <p>2. Agree. The committee has reconsidered its position on this issue. The law does not specifically provide for exclusive jurisdiction in the juvenile court to hear guardianships of delinquent minors, but tacitly allows the juvenile court or the probate court to hear those matters. The rule must be consistent with statute and respect local practice.</p> |
| 5. | Mr. Richard Francis Division Director Orange County Probation Department | N | N | <p>These Judicial Council rules will place additional requirements and mandates which appear to be unfounded, especially regarding providing services to parents, placements for minors and adoption services. While we may anticipate that most minors over 12 years will opt not to be adopted, if one chooses this option, we would be hard pressed to provide the adoption services.</p> | <p>Disagree. The requirements and mandates in these rules are not unfounded; they are consistent with state and federal law.</p> |
| 6. | Mr. Michael K. Frawley Chief Deputy District Attorney Ventura County District | AM | N | <p>The word “must” should not replace the word “shall.”</p> | <p>Disagree. On October 27, 2000, the Judicial Council adopted a policy requiring the use of “must” rather than “shall” in all amendments to the California Rules of</p> |

Comments for SPR02-30
Delinquency Foster Care

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|-----|--|----------|-----------------------------|---|---|
| | Attorney's Office | | | | Court, effective January 1, 2001. |
| 7. | Mr. José Guillen Executive Officer Superior Court of Riverside County | A | N | Agree. | No response required. |
| 8. | Hon. Brenda F. Harbin-Forte Presiding Judge of the Juvenile Court Superior Court of Alameda County | AM | Y | We oppose 1496.2 to the extent that it forces the juvenile courts to become probate courts. By making the juvenile court the court of first resort for establishment of a legal guardianship, an unnecessary burden is placed on juvenile court resources. | Agree. The committee has reconsidered its position on this issue. The law does not specifically provide for exclusive jurisdiction in the juvenile court to hear guardianships of delinquent minors, but tacitly allows the juvenile court or the probate court to hear those matters. The rule must be consistent with statute and respect local practice. |
| 9. | Ms. Sylvia J. Johnson Chief Probation Officer Alameda County Probation Department | AM | N | Recognition of resource issue in this county and throughout the state. The review of placement case plan, etc. is an important time-involved process. Further, the availability of suitable choices for placements is a problem — there are very few. Independent living is a concept with few dollars and few if any resources. The safety of minors re planning is at risk. | We acknowledge that the commenter's concerns about resources and unavailability of good placements are valid. However, these concerns cannot be addressed through the rule-making process. |
| 10. | Mr. Michael P. Judge Public Defender Los Angeles County Public Defender's Office | N | N | Agree. | No response required. |
| 11. | Mr. J. Kendrick Kresse Legal Director California Center for Law and | AM | N | We are commenting on five of the proposals. All comments urge that a notice be added to the forms regarding accommodations for deaf and hearing | This issue is deferred pending approval of a comprehensive policy by the Rules and Projects Committee. |

Comments for SPR02-30
Delinquency Foster Care

| | Commentator | Position | Comment on behalf of group? | Comment | Committee Response |
|-----|--|----------|-----------------------------|--|-----------------------|
| | the Deaf | | | <p>impaired individuals. Specifically, that a sign language interpreter, assistive listening device or real-time transcriber will be provided upon request. The notice should include contact information.</p> <p>This information is needed to ensure compliance with and effective implementation of rule 989.3; Evidence Code § 754; Civil Code § 54.8; title II of the American with Disabilities Act, 42 U.S.C. 12131 et seq., as implemented by 28 CFR 35.160–164.</p> <p>On JV-625, a notice about accommodations should be included at the bottom.</p> | |
| 12. | Ms. Minnie Monarque Deputy Court Executive Officer Superior Court of Monterey County | A | N | Agree. | No response required. |
| 13. | Ms. Linda Shelton Chief Probation Officer Glenn County Probation Department | A | N | Agree. | No response required. |
| 14. | Hon. Harry R. Sheppard Presiding Judge Superior Court of Alameda County | A | N | Agree. | No response required. |